

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File Number: EB-05-HU-045
Marcus A. Roberts)	
)	NAL/Acct. No.: 200732540001
Houston, Texas)	
)	FRN: 0004307195
)	
)	

FORFEITURE ORDER

Adopted: May 2, 2007

Released: May 4, 2007

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Marcus A. Roberts for willful violation of Section 301 of the Communications Act of 1934, as amended (“*Act*”).¹ The noted violation involves Mr. Roberts’ operation of an unlicensed radio transmitter.

II. BACKGROUND

2. In response to a complaint of interference to household electronic equipment, on April 28, 2006, the Commission’s Houston Office of the Enforcement Bureau (“*Houston Office*”) issued Mr. Roberts a warning letter advising him that operation of Citizens Band (“*CB*”) radio equipment with greater power than authorized in the Commission’s Rules (“*Rules*”) voids the authority to operate the station and is therefore considered unlicensed operation. The letter further advised that unlicensed operation is a violation of Section 301 of the Act, and could subject the operator to penalties including monetary fines.

3. On September 28, 2006, in response to another complaint of interference, agents from the Houston Office inspected the CB station located at Mr. Roberts’ residence. During testing of Mr. Roberts’ equipment, the agents determined that his CB station was producing the maximum power authorized in the Rules for CB radio stations. The agents verbally warned Mr. Roberts that any operation of his CB radio station with more power than observed during this inspection would be a violation of the Rules. The agents then inspected a CB radio station installed in Mr. Roberts’ vehicle. The CB radio station in the vehicle included a CB transmitter and two linear amplifiers. The linear amplifiers observed had the capability to boost the power of the station to several hundred times the authorized power level. Mr. Roberts admitted to operating the amplifiers and exceeding the authorized power limit; but claimed that he only used this equipment outside the neighborhood. The agents again verbally warned Mr. Roberts that the use of linear amplifiers or any device that creates a power greater than the authorized limit is strictly prohibited by the Rules and voids the authority to operate the CB station.

4. On November 8, 2006, an agent with the Houston Office located the source of a strong

¹ 47 U.S.C. § 301.

signal on a CB radio channel using direction finding methods to Mr. Roberts' residence. The agent recognized the voice of the transmissions to be that of Mr. Roberts. The complainant contacted the agent by telephone to report that Mr. Roberts' transmissions were currently causing interference to her home electronic entertainment equipment. Mr. Roberts' voice was simultaneously observed on the vehicle receiver and on the telephone while talking with the complainant. The agent measured the signal strength of the radio transmissions from Mr. Roberts' radio station with a spectrum analyzer. Agents from the Houston Office then conducted an inspection of Mr. Roberts' CB station. Mr. Roberts admitted he had been operating the radio station prior to the start of this inspection. A wattmeter determined the power of Mr. Roberts' transmitter during the inspection to be four watts, the maximum authorized under the Rules. The complainant was contacted and was not receiving any interference from Mr. Roberts' transmitter while the agents tested the equipment. Without adjusting the output power of the transmitter, the agents conducted a second signal strength measurement, and this second measurement showed a reduction in power from the first measurement by a factor of 10. When asked about the obvious change in power levels, Mr. Roberts offered no explanation.

5. On January 3, 2007, the Houston Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. Roberts in the amount of ten thousand dollars (\$10,000), for the apparent willful violation of Section 301 of the Act.² Mr. Roberts submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

III. DISCUSSION

6. The proposed forfeiture amounts in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended,³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Mr. Roberts' response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵

7. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license. Section 95.404 of the Rules⁶ states that CB operators do not require an individual license to operate a CB station because they are authorized by this rule to operate in accordance with the rules in this subpart. Section 95.410(a) of the Rules⁷ states that CB station transmitter output must not exceed 4 watts carrier power. Section 95.410(c) of the Rules⁸ also states that use of a transmitter which has carrier power in excess of that authorized voids your authority to operate the station. On November 8, 2006, agents from the Houston Office determined that Mr. Roberts operated his CB station with power greater than 4 watts carrier power. On April 28 and September 28, 2006, Mr. Roberts was warned that operation of his CB station in excess of 4 watts output power violated the Rules

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732540001 (Enf. Bur., Houston Office, January 3, 2007) ("*NAL*").

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(E).

⁶ 47 C.F.R. § 95.404.

⁷ 47 C.F.R. § 95.410(a).

⁸ 47 C.F.R. § 95.410(c).

and voided his authority to operate his CB station. Because Mr. Roberts violated the CB Rules by operating overpower, he voided his authority to operate his CB station pursuant to Section 95.404 of the Rules. Based on the evidence before us, we find that on November 8, 2006, Mr. Roberts willfully violated Section 301 of the Act by operating a radio transmitter, his CB station, without authorization from the Commission.

8. In response to the *NAL*, Mr. Roberts asserts that he did not willfully operate overpower. Mr. Roberts claims that after the inspection he took his CB transmitter to a radio shop, which informed him that his voltage regulator was defective. Mr. Roberts claims that this malfunction caused a power fluctuation, which caused the overpower operation, and that he was unaware of the malfunction until after the inspection.

9. However, during the inspection, the agent observed no evidence that Mr. Roberts' CB transmitter was malfunctioning. The CB transmitter operated smoothly, with no fluctuations in power. We find it unlikely that his transmitter would function properly only during an inspection. Given the results of the inspection, Mr. Roberts' history of warnings, and his failure to provide corroboration of the equipment malfunction, we do not rely upon Mr. Roberts' assertion that his voltage regulator was faulty. Moreover, Mr. Roberts had been warned on more than one occasion against overpower operation and consciously operated his CB transmitter, which on November 8, 2006 transmitted overpower. Thus, we find his actions to be willful.

10. We have examined Mr. Roberts' response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that no reduction of the proposed \$10,000 forfeiture is warranted.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Marcus A. Roberts **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 301 of the Act.⁹

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁰ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹¹

⁹ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁰ 47 U.S.C. § 504(a).

¹¹ See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Marcus A. Roberts at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau